



## Native American Rights Fund

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Response to Questions for the Record by Republican Members  
Re S.46 To Repeal the Klamath Tribe Judgment Fund Act  
Submitted by Donald R. Wharton,  
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The “Questions for the Record” are based on a fundamental misunderstanding of the nature of the funds at issue in S.46 to Repeal the Klamath Tribe Judgment Fund Act. That misunderstanding was created by a misstatement in the Senate Committee on Indian Affairs report (Senate Report 116-6) received from the CBO to the effect that the funds at issue in S.46 are intended for approximately 200 individuals whom the Department of the Interior (DOI) cannot locate. The funds at issue are tribal funds to which no individual has any current claim.

### **Background of the Funds at Issue in S.46; Establishing the “Litigation Account”**

The purpose of the Klamath Tribe: Distribution of Judgement Fund Act, Pub. L. 89-224, Oct 1, 1965 (the Judgement Fund Act) was to provide for the management and distribution of funds belonging to **the Klamath Tribes**, not individual members of the Tribes. Individual members do not secure an interest in any funds until they are declared ready for distribution. The history of how these accounts came about is essential to understanding the present situation.

Congress adopted legislation to “Terminate” the government-to-government relationship between the United States and the Klamath and Modoc Tribes, and the Yahooskin Band of Snake Indians (Pub. L. 83-587). (The Termination Act). One purpose of the Termination Act was to convert the property of the Tribes into individual shares that would be distributed to the members listed on a “Final Roll”. That roll was compiled as of August 13, 1954 – the date of the Termination Act. There were 2133 tribal members on the so-called Final Roll. In addition to an 850,000 acre reservation containing extensive stands of ponderosa pine and several cattle ranches, the Tribes also had claims against the United States filed pursuant to the Indian Claims Commission Act (ICCA). The ICCA waived the sovereign immunity of the United States for lawsuits brought by tribes seeking compensation for unconscionable takings of land or

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<sup>1</sup> The Klamath Indian Tribes is a reference to a single tribe, so “Tribes” when referencing the Klamath Tribes is treated as singular.

resources, and/or mismanagement of tribal resources by the United States. The claims for the Klamath Tribes were designated as Docket 100 in the ICC. Docket 100 had several subparts resulting in four (4) separate settlements. While the assets of the Tribes could be, and were, monetized and shares distributed to the members, the claims before the ICC were as yet unresolved. It was necessary therefore to provide a mechanism for distribution of any funds secured in the future resulting from those claims.

In 1964, when the first of the claims by the Klamath Tribes before the ICC was settled, there was no regular provision for payment by the United States of such claims. Each judgment had to be individually authorized and appropriated by Congress.<sup>2</sup> There was, moreover, no provision for how such a judgment would be distributed to the 2133 members. The Judgement Fund Act adopted for the Klamath Tribes provided that any funds secured by the Tribes resulting from a claim, along with all other funds deposited in the United States Treasury to the credit of the Klamath Tribes, would be distributed in equal shares to the 2133 members of the final roll, their heirs or legatees. Those distributions would only occur after the deductions were made for the costs of distributing funds and setting aside “funds heretofore or hereafter set aside for the purpose of paying the usual and necessary expenses of prosecuting claims against the United States.” Sec. 1 of Pub. L. 89-224. The funds “heretofore” set aside was \$350,000 the Tribes set aside in 1958 in the trust accounts of the Tribes managed by the Interior Department for the expenses of litigating claims.

#### **Distributions pursuant to Pub. L. 89-224**

Over the years the funds set aside accumulated interest and grew. With each successive distribution resulting from a judgment against the United States in the ICC the original amount of \$350,000 of tribal funds was excepted and retained in the account. These came to known as the “litigation funds”. After the initial distribution in 1965, there were three more judgments from the ICC resulting in two more judgment fund distributions in 1975 and 1977. Each time the litigation funds were reserved to the account. The last per capita distribution took place in 1996 and was the result of the growth of funds from interest on the account, not a judgment. Once again the litigation funds were excepted from distribution.

#### **Interior Accounting for the Funds to the Klamath Tribes**

The Tribes have always been aware of the funds in the trust accounts. They receive monthly accountings of these funds from the U.S. Department of the Interior’s Office of the Special Trustee For American Indians, in Albuquerque, New Mexico. The litigation fund account, which the Office of the Special Trustee, Department of the Interior, manages as

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<sup>2</sup> This was true, not just for the Klamath Tribes but for all tribal claims before the ICC. Congress adopted the Indian Tribal Judgement Funds Use and or Distribution Act in 1973. Pub.L. 93-134, Oct, 19, 1973. That law did not apply to the Klamaths because if the special distribution act adopted for them.

account XXXXX7274 as tribal funds, has a balance of approximately \$413,343. There is also an account that contains tribal funds that were not distributed in the last distribution which have grown over the years since 1996. The Office of the Special Trustee manages these tribal funds in account XXXXX8107, and has a balance of approximately \$221,823. Finally, there is an account the source of which is unknown in account XXXXX1012 with approximately \$17,500. These funds are separate and distinct from any funds held by the Office of the Special Trustee for the benefit of individuals. The Tribes do not receive and not entitled to receive, any accounting for funds belonging to individuals.

### **Distribution Pursuant to the Judgment Act to Non-members and Non-Indians; Exorbitant Cost of Distribution Under the Act; Federal Appropriation of Tribal Funds**

The concern raised that should distribution of tribal funds held in these accounts be made pursuant to the Judgment Fund Act, a substantial amount of those funds would go to non-members of the Tribes is based on the requirements of the Judgment Fund Act. That Act requires that should these tribal funds be distributed they would have to be distributed the heirs and legatees of any deceased member of the 2133 people listed on the 1954 roll. It is not a requirement that the heirs or legatees be members of the Klamath Tribes. Because nearly 1600 the 1954 members listed on that roll are deceased, many of the distributions would go to the heirs and legatees; a substantial number of which are neither members of the Tribes nor even Native American.

Of equal or perhaps greater concern, is that the costs of distribution would consume the greater portion of the funds. The administrative costs the BIA would require for identifying each of the members, their heirs and legatees, their correct addresses, and the exact portion of their share to be distributed, would – based on past experience – consume more than one-half of the funds.

Finally, Section 5 of the Judgment Fund Act provides that any funds the Secretary of the Interior determines to be “insufficient to justify further distribution, shall be deposited in the miscellaneous receipts of the Treasury of the United States.” Clearly an appropriation of tribal funds. In contrast, the Indian Tribal Judgment Funds Use and Distribution Act (Pub. L. 93-134) adopted for those tribes which unlike the Klamath Tribes had no special distribution act, includes a provision that any funds remaining after distribution and payment of all costs “shall be held in trust by the Secretary for the tribe or tribes involved if the plan [adopted pursuant to the Act] does not otherwise provide for the use of such amount”. Clearly not to be returned to the Treasury. In addition, Pub. L. 87-283 (25 U.S.C. Sec 164) states that there be restoration to tribal ownership any funds creditable to an individual in a per capita distribution and

held in trust by the United States . . . and any interest earned on such share properly creditable to the individual shall be restored to tribal ownership if for any reason such share cannot be paid to the individual entitled thereto and remains unclaimed

for a period of six years from the date of the administrative directive to make the payment. . . .

No other Tribe is faced with federal appropriation of their funds based on failure to identify and accomplish distributions.

### **Tribal Communication and Coordination With the DOI**

The Tribes continually apprise the Department of the Interior of the status the 2133 members on the so-called 1954 Final Roll. The tribes however, cannot access or adequately track the status of heirs and legatees. That information simply is not reported to the Tribes.

The reference on page 5 of Senate Report 116-6, received from the Congressional Budget Office, is simply erroneous. The Tribes has no access to the records or accounts managed by the Interior Department on behalf of any individuals; usually referred to as Individual Indian Money (IMM) accounts. As a result, the Tribes has no way to determine whether any of them are members of the Tribes, or are listed on the so-called 1954 Final Roll.